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Message Text

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ACTION DLOS-06

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OES-06 SSO-00 INRE-00 /053 W
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O 191343Z JAN 77
FM AMEMBASSY OSLO
TO SECSTATE WASHDC IMMEDIATE IMMEDIATE 3088

C O N F I D E N T I A L SECTION 1 OF 2 OSLO 0304

STADIS//////////////////////////////////

FOR AMBASSADOR LEARSON S/AL AND JAMES D/LOS

E.O. 11652: GDS
TAGS: POLS, NO
SUBJECT: NORWEGIAN COMPROMISE TEXT OF ARTICLE 22 OF PROPOSED
LOS CONVENTION

REF: JAMES (D/LOS) AND GRIFFITH TELCON OF JAN 18

THE SUBJECT TEXT WHICH AMBASSADOR VINDENES OF NORWAY WILL BRING
WITH HIM TO WASHINGTON FOR CONSULTATIONS WITH AMBASSADOR LEARSON
ON JANUARY 21 FOLLOWS:
ARTICLE 22
ALTERNATIVE 1 ALTERNATIVE 2 ALTERNATIVE 3 ALTERNATIVE 4
(USA (USSR) (RSNT) (GROUP OF 77)
SUGGESTED COMPROMISE FORMULA:
1. THE EXCLUSIVE RIGHT TO CARRY OUT ACTIVITIES IN THE AREA SHALL
LIE WITH THE AUTHORITY. THE AUTHORITY MAY EXERCISE THIS RIGHT:
(I) THROUGH THE ENTERPRISE
(II) THROUGH A FORM OF ASSOCIATION BETWEEN THE AUTHORITY AND
STATES PARTIES OR STATE ENTERPRISES, OR PERSONS NATURAL
OR JURIDICAL WHICH POSSES THE NATIONALITY OF STATES
PARITES OR ARE EFFECTIVELY CONTROLLED BY THEM OR
THEIR NATIONALS, WHEN SPONSORED BY SUCH STATES, OR
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ANY GROUP OF THE FOREGOING.

2. ACTIVITIES IN THE AREA SHALL BE CONDUCTED IN ACCORDANCE WITH
A FORMAL WRITTEN PLAN OF WORK DRAWN UP IN ACCORDANCE WITH ANNEX 1
AND APPROVED BY THE COUNCIL AFTER REVIEW BY THE TECHNICAL COMMISSION.
ACTIVITIES IN THE AREA IN ASSOCIATION WITH THE ENTITIES SPECIFIED
IN PARAGRAPH 1 (II), SHALL BE CONDUCTED PURSUANT TO A CONTRACT

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WITH THE AUTHORITY ENTERED INTO IN ACCORDANCE WITH ANNEX 1 AND APPROVED BY THE COUNCIL AFTER REVIEW BY THE TECHNICAL COMMISSION.

3. THE AUTHORITY SHALL EXERCISE CONTROL OVER ACTIVITIES IN THE AREA FOR THE PURPOSE OF SECURING EFFECTIVE COMPLIANCE WITH THE RELEVANT PROVISIONS OF THIS PART OF THE CONVENTION, INCLUDING ITS ANNEXES, AND WITH ALL APPLICABLE RULES, REGULATIONS AND PROCEDURES ESTABLISHED BY THE AUTHORITY, AND THE PLANS OF WORK AND CONTRACTS APPROVED IN ACCORDANCE WITH PARAGRAPH 2. STATES PARTIES SHALL ASSIST THE AUTHORITY BY TAKING ALL MEASURES NECESSARY TO ENSURE SUCH COMPLIANCE.

ARTICLE 23
ALTERNATIVE 1 ALTERNATIVE 2 ALTERNATIVE 3
(USA) (RSNT) (GROUP OF 77)
SUGGESTED COMPROMISE FORMULA:

1. ACTIVITIES IN THE AREA PURSUANT TO ARTICLE 22 SHALL BE CONDUCTED IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THIS PART OF THE CONVENTION, INCLUDING ITS ANNEXES, AND ALL APPLICABLE RULES, REGULATIONS AND PROCEDURES ESTABLISHED BY THE AUTHORITY.

2. THE AUTHORITY SHALL AVOID DISCRIMINATION IN THE EXERCISE OF ITS POWERS AND FUNCTIONS, INCLUDING THE GRANTING OF OPPORTUNITIES FOR ACTIVITIES IN THE AREA. ALL RIGHTS GRANTED SHALL BE FULLY SAFEGUARDED IN ACCORDANCE WITH THE PORVISIONS OF THIS PART OF THE CONVENTION.

3. SPECIAL CONSIDERATION FOR DEVELOPING COUNTRIES SPECIFICALLY PROVIDED FOR IN THIS PART OF THE CONVENTION, INCLUDING THEIR CONFIDENTIAL

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RIGHTS UNDER THE PROVISIONS OF ANNEX 1, PARAGRAPH 8 BIS (I), SHALL NOT BE DEEMED TO BE DISCRIMINATION.

ANNEX I
ALTERNATIVE 1 ALTERNATIVE 2 ALTERNATIVE 3
(USA) (RSNT) (GROUP OF 77)
PARA 8 (NEW)
ACTIVITIES CONDUCTED THROUGH THE ENTERPRISE
SUGGESTED COMPROMISE FORMULA:

ACTIVITIES IN THE AREA CONDUCTED UNDER ARTICLE 22.1.(I) THROUGH THE ENTERPRISE SHALL IN ACCORDANCE WITH ARTILCE 23 BE GOVERNED BY THE RELEVANT PROVISIONS OF THIS PART OF THE CONVENTION, INCLUDING THE RESOURCE POLICY SET FORTH IN ARTICLE 9 AND -, AND THE ANNEXES INCLUDING THE STATUTES OF THE ENTERPRISE AND THE PROVISIONS OF THIS ANNEX AS PROVIDED BY PARAGRAPH 19, AS WELL AS BY SUCH SPECIAL PROVISIONS AS THE AUTHORITY MAY EXTABLISH IN ITS RULES, REGULATIONS AND PROCEDURES, AND SUCH IMPLEMENTARY DECISIONS AS THE AUTHORITY MAY TAKE.

ANNEX I
PARA 8 BIS

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(SELECTION OF APPLICANTS FOR CONTRACTS OF EXPLORATION)
SUGGESTED COMPROMISE FORMULA:
A) APPLICATIONS FOR CONTRACTS WITH RESPECT TO ACTIVITIES OF EXPLORATION SHALL BE SUBMITTED TO THE AUTHORITY IN THE FORM OF A FORMAL WRITTEN PLAN OF WORK, DRAWN UP IN ACCORDANCE WITH THE PROVISIONS OF THIS CONVENTION AND THE RULES, REGULATIONS AND PROCEDURES ESTABLISHED BY THE AUTHORITY IN ACCORDANCE WITH THE PROVISIONS OF THIS ANNEX. THE AUTHORITY SAHLL ENTER INTO NEGOTIATIONS WITH THE APPLICANT ON THE TERMS OF A CONTRACT, PROVIDED THAT THE AUTHORITY FINDS THAT:
(I) THE SUBMITTED PLAN OF WORK CONTAINS THE NECESSARY PARTICULARS FOR THE PROPOSED EXPLORATION ACTIVITIES AS WELL AS SUFFICIENT PARTICULARS FOR SUBSEQUENT EXPLOITATIONS PLANS.
(II) THE APPLICANT POSSESSES THE REQUISITE QUALIFICATIONS PURSUANT TO PARAGRAPH 7;
(III) THE APPLICANT HAS COMPLIED WITH THE PROCEDURES
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ESTABLISHED FOR APPLICATIONS;
(IV) THE APPLICANT AGREES TO COMPLY WITH THE PROVISIONS OF THIS CONVENTION AND WITH ALL APPLICABLE RULES, REGULATIONS AND PROCEDURES ESTABLISHED BY THE AUTHORITY.

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ACTION DLOS-06

INFO OCT-01 EUR-12 ISO-00 SAL-01 SS-15 L-03 SP-02 INR-07
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FM AMEMBASSY OSLO
TO SECSTATE WASHDC IMMEDIATE 3089

C O N F I D E N T I A L SECTION 2 OF 2 OSLO 0304

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B) THE AUTHORITY MAY REFUSE TO ENTER INTO A CONTRACT OF EXPLORATION IF THE NEGOTIATIONS WITH THE APPLICANT HAVE NOT LED TO SUCH CHANGES

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IN HIS PROJECT AS ARE NECESSARY TO ENSURE THAT THE PROJECT IS IN
ACCORDANCE WITH THE PROVISIONS OF THIS CONVENTION AND WITH ALL
APPLICABLE RULES, REGULATIONS AND PROCEDURES ESTABLISHED BY
THE AUTHORITY, IN PARTICULAR:
(I) THE RESOURCES POLICY SET FORTH IN ARTICLES 9 AND
THE RELEVENT DECISIONS OF THE AUTHORITY IN
IMPLEMENTATION THEREOF;
(II) THE RULES, REGULATIONS AND PROCEDURES ESTABLISHED
BY THE AUTHORITY UNDER PARAGRAPH 12 OF THIS ANNEX,
INCLUDING REQUIREMENTS OF OPERATIONS, SUCH AS
DURATION OF ACTIVITIES, PERFORMANCE REQUIREMENTS
AND PROTECTION OF THE MARINE EXVIRONMENT;
(III) THE FINANCIAL REGULATIONS SET FORTH IN PARAGRAPH -;
(IV) THE INTERESTS AND NEEDS OF THE DEVELOPING COUNTRIES
AS PROVIDED FOR IN THIS CONVENTION.
C) WHEN THE AUTHORITY RECEIVES AN APPLICATION IN RESPECT OF
EXPLORATION, IT SHALL HOLD SUCH APPLICATION FOR A PERIOD OF 90
DAYS IN ORDER TO DETERMINE WHETHER IN THAT TIME PERIOD ANY
COMPETING APPLICATION IN RESPECT OF EXPLORATION OF SUBSTANTIALLY
THE SAME AREA AND CATEGORY OF MINERALS WILL HAVE BEEN RECIVED.
D) IF THE AUTHORITY RECEIVES MORE THAN ONE APPLICATION WITHIN
THE TIME LIMIT REFERRED TO IN SUBPARAGRAPH (C) IN RESPECT OF
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SUBSTANTIALLY THE SAME PART OF THE AREA AND CATEGORY OF MINERALS,
SELECTION FROM AMONG THE APPLICANTS SHALL BE MADE ON A COMPETITIVE
BASIS. IN ACCORDANCE WITH SUBPARAGRAPH (A), THE AUTHORITY SHALL
ENTER INTO NEGOTIATIONS WITH THE APPLICANTS IN ORDER TO SELECT
ONE AMONG THEM ON THE BASIS OF A COMPARATIVE CONSIDERATION
OF THEIR APPLICATIONS AND QUALIFICATIONS. ONCE THE SELECTION
IS MADE, THE AUTHORITY SHALL ENTER INTO NEGOTIATIONS WITH
THE SELECTED APPLICANT ON THE TERMS OF A CONTRACT IN ACCORDANCE
WITH SUBPARAGRAPHS (A) AND (B).
E) THE PARTIES MAY AGREE TO INCLUDE IN THE CONTRACT PROVISIONS
GOVERNING THE RESPECTIVE CONTRIBUTIONS OF THE AUTHORITY AND THE
CONTRACTOR RELATING TO FUNDS, MATERIALS, EQUIPMENT AND KNOW-HOW
AS NECESSARY FOR THE CONDUCT OF OPERATIONS COVERED BY THE CONTRACT.
IN THE ABSENCE OF SUCH AGREEMENT AND SUBJECT TO THE PROVISIONS
OF THIS CONVENTION THE CONTRACTOR SHALL HOWEVER USE HIS OWN
FUNDS, MATERIALS, SKILLS AND KNOW-HOW.
F) THE PROPOSED CONTRACT AREA SHALL BE SUFFICIENTLY LARGE TO
ALLOW THE AUTHORITY, AFTER THE STAGES OF EXPLORATION AND
EVALUATION HAVE BEEN COMPLETED, TO DETERMINE THAT UP TO ONE HALF
OF IT SHALL BE RESERVED SOLEY FOR THE CONDUCT OF ACTIVITIES
BY THE AUTHORITY THROUGH THE ENTERPRISE OR IN ASSOCIATION WITH
DEVELOPING COUNTRIES.
G) (THE ISSUE OF A QUOTA OR ANTI-MONOPOLY PROVISION.)
ANNEX I
PARA 9 (NEW)
SELECTION OF APPLICANTS FOR CONTRACTS OF EXPLOITATION)

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SUGGESTED COMPROMISE FORMULA:
A) THE AUTHORITY, ON ITS OWN INITIATIVE, OR UPON RECEIVING AN APPLICATION WITH RESPECT TO ACTIVITIES OF EXPLOITATION IN A PART OF THE AREA AND RELATING TO A SPECIFIED CATEGORY OF MINERALS, SHALL PUBLISH AND MAKE KNOWN TO ALL MEMBERS A TIME LIMIT FOR RECEIVING APPLICATIONS FOR CONTRACTS OF EXPLOITATION. SUCH CONTRACTS MAY NOT RELATE TO MINERALS IN PARTS OF THE AREA WHERE EXPLORATION FOR SUCH MINERALS IS BEING CARRIED OUT BY THE ENTERPRISE OR BY OTHER ENTITIES IN ACCORDANCE WITH ARTICLE 22 OR WHERE SUCH EXPLORATION ACTIVITIES HAVE NOT
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YET BEEN CARRIED OUT.
B) APPLICANTS WHICH HAVE PREVIOUSLY ENTERED INTO A CONTRACT OF EXPLORATION FOR THE AREA AND MINERALS CONCERNED SHALL HAVE A PREFERENCE AND A PRIORITY AMONG APPLICANTS FOR THE CONTRACT OF EXPLOITATION, PROVIDED HOWEVER THAT WHERE THE CONTRACTOR'S PERFORMANCE HAS NOT BEEN SATISFACTORY SUCH PREFERENCE OF PRIORITY MAY BE WITHDRAWN.
C) THE PROVISIONS IN PARAGRAPH 8 BIS SHALL, EXCEPT FOR SUBPARAGRAPHS (C) AND (F), APPLY MUTATIS MUTANDIS TO APPLICATIONS WITH RESPECT TO ACTIVITIES OF EXPLOITATION.
D) AREAS DESIGNATED BY THE AUTHORITY AS RESERVED AREAS IN ACCORDANCE WITH SUBPARAGRAPH (F) OF PARAGRAPH 8 BIS, MAY BE EXPLOITED ONLY BY THE AUTHORITY THROUGH THE ENTERPRISE OR IN ASSOCIATION WITH DEVELOPING COUNTRIES. THE ENTERPRISE SHALL BE GIVEN AN OPPORTUNITY TO DECIDE WHETHER IT WISHES TO CONDUCT THE ACTIVITIES IN THE DESIGNATED AREA ITSELF. WHEN CONSIDERING APPLICATIONS FROM DEVELOPING COUNTRIES, OR FROM A GROUP OF APPLICANTS WHICH INCLUDE DEVELOPING COUNTRIES, FOR AREAS DESIGNATED UNDER SUBPARAGRAPH (F) OF PARAGRAPH 8 BIS, AND NOT SELECTED BY THE ENTERPRISE, THE AUTHORITY SHALL, BEFORE ENTERING INTO A CONTRACT ENSURE THAT THE DEVELOPING COUNTRIES WILL OBTAIN SUBSTANTIAL BENEFIT THEREFROM AS EVIDENCED INTER ALIA BY - - -.
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